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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of NAIM AND JO-ANNE OJEIL.	B228589
NAIM OJEIL, Appellant, v. JO-ANNE SMITH, Respondent.	(Los Angeles County Super. Ct. No. BD215165)

APPEAL from an order of the Superior Court of Los Angeles County. Amy M. Pellman, Judge. Affirmed.

Law Offices of Adam Michael Sacks and Adam Michael Sacks for Appellant.

Friedman & Friedman and Ira M. Friedman for Respondent.

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Appellant Naim Ojeil, aka Naime or Naimie Ojeil, challenges a family law court order requiring him to pay his son's college tuition. The order is consistent with a prior judgment and we affirm.

FACTS

On July 26, 1995, the court dissolved the marriage of appellant and respondent Jo-Anne Smith, formerly Jo-Anne Ojeil. The couple had one minor child – Ryan Ojeil. On August 12, 1996, the court entered judgment on reserved issues (Judgment). The Judgment provided in pertinent part: "Petitioner [Naim Ojeil] shall pay for Ryan's college tuition at a mutually agreeable college or university so long as Ryan is taking at least twelve (12) credits a quarter/semester and has not reached the age of 25."

On August 6, 2010, respondent brought an ex parte application seeking an order that appellant comply with the judgment by paying college tuition for Ryan. Respondent attached her declaration, which included all of the following. Ryan applied to numerous universities and informed appellant of each acceptance letter he received from the universities to which he had applied. Appellant also was informed of the status of each application. Ryan was accepted at the University of San Diego (USD). Appellant, respondent, and Ryan attended an open house at USD "to gather information to make a decision on acceptance." At the open house, appellant told respondent to complete the forms necessary for enrollment at USD. Appellant "encouraged Ryan to attend USD" and "assured" Ryan that "he would attend USD." Ryan planned to attend USD.

At the August 6, 2010 hearing, appellant represented that he was retired and his retirement income was $15,000 a month. Appellant's counsel represented that appellant went to an open house at USD but did not participate in the decision to send Ryan there. Counsel also represented that appellant was not aware of a deposit Ryan made to USD from a joint account. Neither appellant nor his counsel testified under oath. The court concluded that it could not hear the motion ex parte and set August 30, 2010, as a date for a full hearing.

On August 30, 2010, the parties appeared for a hearing and were ordered to first attend mediation. The case did not settle at mediation, and appellant and his counsel left

the courthouse. Because appellant and his counsel left the courthouse, the court held the noticed hearing without appellant or his counsel.

On September 23, 2010, the court issued an order with the following findings. The court did not excuse appellant or his counsel, but they failed to appear at the continued hearing. There was evidence that appellant participated in the college selection process. Appellant filed no income and expense declaration. Based on these findings, the court ordered appellant "to pay Ryan's college tuition to [USD] forthwith in accordance with the terms of the Judgment."

DISCUSSION

1. Substantial Evidence Supports the Judgment

The trial court found that appellant agreed Ryan should attend USD. Appellant challenges this finding, claiming that he never mutually agreed to USD as required by the Judgment. According to him, because this condition precedent never occurred, his obligation to pay tuition was not triggered.

Appellant forfeited this argument because he failed to fairly summarize the evidence. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) As explained by our Supreme Court: "'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.]" (*Ibid.*) When an appellant seeks to challenge the sufficiency of the evidence to support a finding, the appellant must show no substantial evidence supports the finding and must "'set forth in their brief all the material evidence on the point and not merely their own evidence. Unless this is done the error assigned is deemed to be waived.' [Citations.]" (*Ibid.*) By citing *none* of respondent's evidence, appellant forfeited his challenge to the sufficiency of the evidence to support the family law court's finding that appellant agreed Ryan should attend USD.

Appellant's argument also fails on the merits. The trial court's finding is supported by substantial evidence. The evidence showed that appellant was aware of all of the universities to which Ryan applied. Ryan informed appellant of each acceptance letter and the status of each application. After Ryan received his acceptance from USD,

appellant attended an open house at USD and told Ryan that respondent should complete all forms necessary for the university. Appellant told Ryan that "he should attend USD" and "assured" Ryan that Ryan would attend USD. Appellant presented no contrary evidence.[1] Thus, the court's finding that appellant agreed to USD is supported by substantial evidence.

2. Appellant Demonstrates No Other Error

Appellant argues the court violated his rights in making an ex parte order. The court's order however was not ex parte. It followed a noticed motion. Appellant's

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[1] Appellant states without citation to the record that he was prevented from participating in the entire selection process. Appellant also states without citing to the record that he "had never been approached by his adult son Ryan, or by Joanne [*sic*], to commence any discussions in the selection of a college for Ryan." Similarly appellant states, without any citation to the record, that Ryan "unilaterally enrolled in college . . . ." These bare assertions are in violation of California Rules of Court, rule 8.204(a)(1)(C), which requires citations to the record for any reference to a matter in the record. In any event, appellant's statements are not supported by any evidence in the record.

Appellant also states that he filed an income and expense declaration and purports to cite to his appendix, but his appendix contains no income and expense declaration.

Additionally, appellant placed a purported responsive declaration in his appendix, but the declaration is not signed, and we therefore do not consider it. Although appellant states that the declaration was filed in the trial court, the statement is not supported by the record. Even if we were to consider appellant's declaration, the result would be the same. Appellant's declaration states that he did not participate in the college selection process, but substantial evidence supported the family law court's conclusion that appellant had participated in that process.

Finally, as respondent points out, appellant's appendix is deficient. It does not contain the notice of appeal or order appealed from. (See Cal. Rules of Court, rules 8.124(b)(1) & 8.122(b)(1).) It fails to include any evidence presented by respondent, which is necessary for proper consideration of the issues. In providing and relying only on evidence favorable to him, appellant fundamentally misperceives his burden on appeal. Because respondent has provided the necessary documents, we have chosen to consider the appeal on the merits, but such consideration should not be interpreted to mean we condone appellant's numerous deficiencies.

decision to leave court prior to the hearing does not change the nature of the hearing from a noticed hearing to an ex parte hearing. Indeed, in another portion of his brief, appellant acknowledges that the "parties appeared in the morning for the full hearing on the issue of the payment of college tuition . . . ." The court found that the parties were not excused, and appellant does not show otherwise.

Appellant states that the family law court lacked jurisdiction to consider the case, which should have been instead brought as a separate civil lawsuit. Appellant cites no legal authority for his claim that the family law court lacks jurisdiction and therefore has forfeited this argument. (See *Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794 [argument not supported by authority is forfeited]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [Court of Appeal is not required to develop appellants' arguments for them].) In any event, appellant's argument lacks merit as the family law court has jurisdiction to enforce its judgment by an additional order as occurred in this case. (Fam. Code, § 290; see also *Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 25-26 [family law matters should be resolved in family law court, not civil court].)

DISPOSITION

The order is affirmed. Respondent shall have her costs on appeal.

FLIER, J.

We concur:

BIGELOW, P. J. GRIMES, J.